

See 86 Ill. Adm. Code 130.2005. (This is a GIL.)

January 14, 2004

Dear Xxxxx:

This letter is in response to your letter dated October 27, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are in the process of updating our sales and use tax guidelines for the fundraising industry. Following is a fact pattern for which we would like to obtain your guidance as it relates to sales and use tax compliance requirements.

Fact Pattern:

Company A is in the business of arranging fundraising functions for various school districts. Company A has two primary programs:

- 1) Company A provides the school district with a selection of products that can be sold through a catalog/flyer process. The item selection consists of food products (frozen and non-frozen), gifts or candles. The school district selects the program of their choice. Students are then provided with applicable catalogs/flyers for distribution to potential purchasers. The purchasers make their selection using a pre-printed order form and make payment for the goods. The order forms and applicable payment are sent to Company A. Company A fills the product orders and ships the goods to the school district for delivery by the students.
- 2) Company A provides the school district with Discount Cards or Coupon Booklets. The Discount Cards represent an annual membership for which the purchaser can visit participating establishments and purchase goods or services at a discounted price. The

Coupon Booklets provide the purchaser with a selection of discount and/or 'buy-one-get-one-free' coupons that can be used at participating establishments. A quantity of discount cards and/or coupon booklets are sent to the school district in advance of the sales process. Receipts are collected as the students provide the cards and booklets to the purchasers. Applicable funds are forwarded to Company A, along with any unsold cards or booklets. Both the cards and the coupons contain purchase requirements and expiration dates.

An agreed upon portion of the funds is retained by the school district for all sales (products, discount cards, and coupon booklets). The remainder of the funds is forwarded to Company A by the school district. The school district does not take title (does not purchase for resale) to the products. The school district serves as a sales representative for Company A in exchange for a portion of the funds received from each sale.

Taxability Situation(s):

Example 1: School District (SD) #1 elects to sell frozen pizzas. Each pizza is sold for \$10. SD#1 is entitled to 40% of each sale.

Example 2: SD#2 elects to sell non-food items (i.e. candles). Each candle is sold for \$10. SD#2 is entitled to 40% of each sale.

Example 3: SD#3 elects to sell candy that is contained in a decorative collectible canister. Each canister w/candy is sold for \$10. SD#3 is entitled to 40% of each sale.

Example 4: SD#4 elects to sell discount cards. Each discount card is sold for \$25. The discount card provides the purchaser with a membership and enables the purchaser to visit participating establishments and receive a 10% discount on all purchases. SD#4 is entitled to 40% of each card sale.

Example 5: SD#5 elects to sell coupon booklets. Each booklet sells for \$25. The coupons within the booklet enable the purchaser to visit participating establishments and receive a specified discount of purchases or purchase something on a buy-one-get-one free basis. SD#5 is entitled to 40% of each coupon booklet sale.

Taxability Question(s):

On the basis of the fact pattern provided above, please provide guidance as to whether the five above examples are subject to sales tax. For those that are subject to sales tax, please provide guidance as to the proper sales tax calculation process and/or options.

Additional Specific Question(s):

If a transaction is subject to sales tax:

- a. What amount is taxable?
- b. How is the tax rate calculated (location of the school, seller (out-of-state), or purchaser)?

- c. Is the school district required to collect the applicable sales tax when making the sale on behalf of Company A?
- d. Must the sales tax be separately stated to the purchaser? If yes, what is the proper notification method? (there are no invoices involved with the transactions)
- e. Can Company A 'back-out' the sales tax from the taxable receipts?
- f. Does your state have a special sales tax rate or exemption for 'food' items? If yes, does it make a difference if the food items are frozen v. non-frozen? Does it make a difference if the food items are contained within a decorative canister?
- g. Are the receipts from discount card memberships or coupon booklets excluded from taxation on the basis that the purchaser is taxed appropriately upon using the card or coupon?
- h. Would the above examples be tax exempt transactions if Company A were to sell all goods to the school districts with the school districts taking title to the goods and reselling the goods to purchasers?

We appreciate your assistance with this inquiry. Please provide me with your written guidance at your earliest convenience. Please reference any applicable statutes, regulations, court cases or letter rulings related to sale activities of this nature. Do not hesitate to contact me with any questions.

You requested information regarding the fundraising industry. Please see 86 Ill. Adm. Code 130.2005.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

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